

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MILDRED C. FREESTON, et al.,

11 Plaintiffs,

12 v.

13 BISHOP, WHITE & MARSHALL, P.S.,
14 et al.,

15 Defendants.

CASE NO. C09-5560BHS

ORDER DENYING
PLAINTIFFS' EMERGENCY
MOTION FOR A
TEMPORARY RESTRAINING
ORDER

16 This matter comes before the Court on Plaintiffs' Emergency Motion for a
17 Temporary Restraining Order (Dkt. 12). The Court has considered the pleadings filed in
18 support of the motion and the remainder of the file and hereby denies the motion for the
19 reasons stated herein.

20 **I. PROCEDURAL HISTORY**

21 On September 17, 2009, Plaintiffs filed a complaint (Dkt. 2) and an Emergency
22 Motion for Removal of Case from Pierce County Superior Court (Dkt. 6). Plaintiffs
23 assert that the Court has jurisdiction pursuant to 42 U.S.C. § 1983 and "other Federal
24 Statutes" Dkt. 2, ¶ 1. The majority of Plaintiffs' claims are based on fraud, but one
25 claim asserts a violation of the Federal Truth in Lending Act. *Id.*, ¶ 19.

26 On September 21, 2009, Plaintiff filed a First Amended Complaint. Dkt. 8.
27
28

1 On September 22, 2009, the Court denied Plaintiffs' emergency motion for
2 removal. Dkt. 9.

3 On October 26, 2009, Defendant Chevy Chase Bank appeared in this matter. Dkt.
4 11.

5 On November 12, 2009, Plaintiffs filed an Emergency Motion/Application for
6 Temporary Restraining Order. Dkt. 12. In support of their motion, Plaintiffs have
7 submitted an eviction notice that states that eviction will occur at 6 AM on November 16,
8 2009. *Id.*, Exh. 1 at 14.

9 On November 13, 2009, the Court requested a response from Defendant Chevy
10 Chase Bank (Dkt. 13) and Defendant filed a response (Dkt. 14).

11 **II. FACTUAL BACKGROUND**

12 In the complaint, Plaintiffs allege facts as follows:

13 Defendant CHEVY CHASE BANK FSB induced Charles E.
14 Freeston, prior to his death, and, Plaintiff Mildred C. Freeston in to engage
15 a new mortgage by enticement to lower mortgage cost of \$300 per month.
16 The mortgage cost were actually \$372.00 more than prior. During this time
17 my husband Charles E. Freeston was ill and he died and the CHEVY
18 CHASE BANK FSB agent knew of this situation.

19 CHEVY CHASE BANK FSB used predatory tactics, and took
20 advantage of senior citizens. Mildred C. Freeston is 84 years, and Shirsha
21 Sumeru is 65. We had problems with Charles's retirement funds and
22 couldn't make the payments. CHEVY CHASE BANK FSB foreclosed
23 when we couldn't even catch up because the Medicaid - Nursing Home bills
24 were horrendous before Charles's death. CHEVY CHASE BANK FSB
25 engaged BISHOP, WHITE & MARSHALL, P.S. for the foreclosure as
26 trustee.

27 The foreclosure proceeded to conclusion. The house was taken over
28 by FANNIE MAE, on April 3, 2009. FANNIE MAE engaged BISHOP,
WHITE & MARSHALL, P.S. as trustees for the sale from CHEVY
CHASE BANK FSB and auction process.

BISHOP, WHITE & MARSHALL, P.S. acted for both parties. The
seller of a foreclosed home CHEVY CHASE BANK FSB and FANNIE
MAE, a U.S. Government instrumentality the buyer.

Bishop, White & Marshall, P.S., filed for eviction unlawful detainer
and writ of possession. The hearing was on July 13, 2009 Mildred C.
Freeston read into the record a statement relating the fraud. Only then did
Commissioner James B. Marshall read our defenses as we were authorized
to present according to Washington laws governing such matters.
Commissioner Marshall ordered a hearing which has been held off. We
believe there is a court date before Commissioner Robyn Lindsay
September 15, 2009. Commissioner Marshall ordered BISHOP WHITE &

1 MARSHALL, PS, attorney Annette Cook to respond by briefing the federal
law protecting foreclosures like ours.

2 We filed counter complaints to the eviction with submission for
3 record consisting of federal court findings showing MERS had no standing,
4 CHEVY CHASE BANK FSB had no standing to foreclose. The Counter
Complaint has never been answered. The Counter Complaint named
5 BISHOP WHITE & MARSHALL, PS, attorney defendants covering up a
fraud on a federal instrumentality, FANNIE MAE.

6 Dkt. 2, ¶¶ 3-10.

7 With regard to the instant motion, Plaintiffs allege facts as follows:

8 Irreparable injury is apparent from the facts. The facts show
9 Plaintiffs will loose possession of the home at 8918 108th St. SW,
Lakewood, Washington, 98498 under Defendants refusal to require Federal
10 case law to be given full faith and credit by PIERCE COUNTY SUPERIOR
COURTS.

11 Defendant parties are not harmed by this Temporary Restraining
Order in that Defendants have no change in status from the last one year
12 and four months. Defendants lose nothing at this point other than a few days
before hearing is set for permanent Injunctive order holding status quo until
this matter is litigated.

13 Defendants Annette Cook of [Bishop, White, & Marshall] stated on
October 8 that no eviction would take place. Apparent agent for Defendant
14 FANNIE MAE: David Hitchcock stated this would not take place for at
least three months. Both these statements In context of Defendant status of
15 parties attacking the Plaintiffs who are 85 and 65 year old ladies with
nowhere else to live, who are fighting for their lives to avoid being harmed
and damaged by fraudulent bank practices.

16 Plaintiffs have been denied honest services by governmental and
quasi governmental actors, Defendants, and will be injured and damaged by
17 loss of home by continued acts and omissions Defendants.

18 Plaintiffs move the Court to issue Temporary Restraining Order to be
issued immediately and that hearing on Permanent Injunction barring
19 eviction under writ of possession fraudulently obtained be set within 8 days.

20 Dkt. 12, ¶¶ 2-7.

21 **III. DISCUSSION**

22 Plaintiffs move for a temporary restraining order pursuant to Fed. R. Civ. P. 65.

23 Dkt. 12, ¶ 2. While Plaintiffs have supplied facts regarding irreparable loss, they have
24 failed to provide facts regarding “any efforts made to give notice [to the opposing parties]
25 and the reasons why [notice] should not be required.” Fed. R. Civ. P. 65(b)(1). While
26 Defendant Chevy Chase Bank has notice of the motion, the record is silent whether any
27 other Defendant has received notice of the motion. Therefore, the Court denies the
28 request for ex parte relief based on this failure to comply with the rules of procedure.

1 Even if the Court were to reach the merits of the motion, Plaintiffs have failed to
2 meet their burdens for preliminary relief. To obtain preliminary injunctive relief, the
3 moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of
4 irreparable harm to the moving party in the absence of preliminary relief; (3) a balance of
5 equities tips in the favor of the moving party; and (4) that an injunction is in the public
6 interest. *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 374
7 (2008).


8 In this case, Plaintiffs have failed to make a showing as to each of these required
9 elements. The Court agrees with Plaintiffs that there is a likelihood of irreparable harm if
10 the eviction proceeds as planned. Plaintiffs, however, have failed to show that they are
11 likely to succeed on the merits of their federal claims for relief. It is also unclear whether,
12 based on the asserted claims, Plaintiffs would be entitled to injunctive relief instead of
13 damages. Therefore, the Court denies Plaintiffs' request for a temporary restraining order
14 because Plaintiffs have failed to make a showing as to each element of standard for
15 preliminary relief.

16 IV. ORDER

17 Therefore, it is hereby

18 **ORDERED** that Plaintiffs' Emergency Motion for a Temporary Restraining Order
19 (Dkt. 12) is **DENIED**.

20 DATED this 13th day of November, 2009.

21
22 
23 BENJAMIN H. SETTLE
24 United States District Judge
25
26
27
28